

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENNETH BLAIR AND MARY)	
ELIZABETH BLAIR)	
)	
COMPLAINANTS)	
)	
v.)	CASE NO. 98-095
)	
BELLSOUTH TELECOMMUNI-)	
CATIONS, INC.; OAN; TALTON)	
TELECOMMUNICATION CORP.;)	
AND ONCOR)	
)	
DEFENDANTS)	

O R D E R

On January 27, 1998, Kenneth Blair and Mary Elizabeth Blair ("Complainants") filed a formal complaint with the Public Service Commission ("Commission") against BellSouth Telecommunications ("BellSouth"), OAN Services, Inc. ("OAN"), Talton Telecommunications, Corp. ("Talton"), and ONCOR Communications, Inc. ("ONCOR"). The Commission, by Order of February 25, 1998, directed the Defendants to either satisfy the matters in the complaint or file a written answer within ten days from the date of service of the Order. OAN requested, and the Commission granted, an extension of time in which to respond to the complaint. An answer was thereafter timely filed by OAN on March 16, 1998.

The Complainants allege in their complaint against OAN that OAN is unlawfully transacting business in the State of Kentucky in violation of the Kentucky Constitution and Chapter 271B of the Kentucky Revised Statutes. In its answer to the complaint, OAN denies the allegation and affirmatively states that the services provided by OAN do not constitute transacting business within the State of Kentucky pursuant to 271B.15-010(h) and (k). Complainants subsequently filed a motion to have the Attorney General intervene in this action and moved that KRS 271B.15-010(h) and (k) relied on by OAN be found unconstitutional. The Attorney General, through his Office of Rate Intervention, filed a response to the motion to intervene on May 21, 1998 requesting that Complainants' motion be denied.

After reviewing the documents filed, the Commission has determined that the first issue to be resolved is whether the Commission has jurisdiction over OAN.

The Commission is an agency of the Commonwealth of Kentucky and as such has only the powers that have been granted to it by the General Assembly. KRS 278.040 provides that the "jurisdiction of the Commission shall extend to all utilities in this state." KRS 278.260(1) further provides that "[t]he Commission shall have original jurisdiction over complaints as to rates or service of any utility. . . ." KRS 278.010(3) defines a utility as:

[A]ny person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with: . . .

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;

- (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses;
- (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
- (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
- (e) The transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or
- (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district.

OAN provides billing and collection services to interexchange carriers, operator service providers and customer-owned, coin-operated telephone companies. As such, OAN does not meet the statutory definition of a utility.

The Commission, having found that OAN is not a utility, finds that it lacks jurisdiction over OAN and lacks the ability to grant the relief requested by the Complainants in their complaint against OAN.

IT IS THEREFORE ORDERED that:

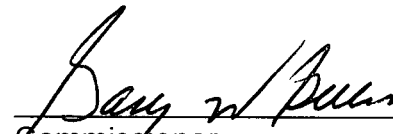
1. The complaint against OAN Services, Inc. filed in this action on January 27, 1998 is dismissed with prejudice.
2. The motion by Complainants for intervention by the Attorney General filed in this action on May 5, 1998 is denied.

Done at Frankfort, Kentucky, this 22nd day of June, 1998.

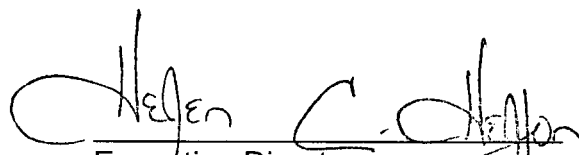
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

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IT IS ORDERED that BellSouth shall file the original and 4 copies of the following information with the Commission with a copy to all parties of record no later than ten days from the date of this Order. BellSouth shall furnish with each response the name of the witness who will be available to respond to the questions concerning each item of information requested should a public hearing be scheduled.

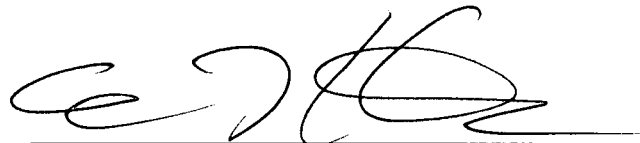
1. The Answer filed on behalf of BellSouth states that it is BellSouth's position that the charges in question are appropriate and are owed by Mr. and Mrs. Blair and that research on the calls in question established that the calls billed on the calling card were made to the telephone number assigned to Kenneth Blair, Winchester, Kentucky. Please provide all telephone bills that reflect charges for the calls in question.

2. Please provide the investigation reports, if any, that were prepared by BellSouth following its research of the calls in question.

3. Please state in detail the services requested by, and provided to, the Complainants by BellSouth.

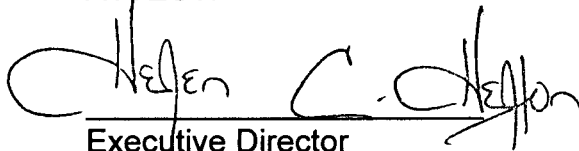
Done at Frankfort, Kentucky, this 22nd day of June, 1998.

PUBLIC SERVICE COMMISSION



For the Commission

ATTEST:



Executive Director